cr 14321 S (1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL No. 532/2006

APPELLANTS/ DEFENDANTS :

1A. Geeta Barman,
Wd/o Late Nandlal Barman
Aged about 37 years

1B. Vikram Barman,
S/o Late Nandlal Barman,
Aged about 21 years

1C. Soni Barman,
S/o Late Nandlal Barman,
Aged about 18 years

1D. Vikas Barman,
S/o Late Nandlal Barman,
Aged about 14 years

1E. Manish Barman,
S/o Late Nandlal Barman,
Aged about 10 years

Appellant No. 1D & 1E are minor represented by their Mother Smt. Geeta Barman

2. Smt. Durga Bai,
Wd/o Late Mohan Lal Barman,
Aged about 62 years

3. Lakhan Lal,
S/o Late Mohanlal Barman,
Aged about 40 years

4. Kundan Lal Barman,
S/o Late Mohanlal Barman,
Aged about 30 years

All R/o Polsai Para, Durg, Tehsil & District Durg, (C.G.)

P.R.No. 3792 dated 24/11/06 Durg
Presented by Shri Jitendra Gupta

VERSUS

RESPONDENT/ PLAINTIFF

R. S

Mohammad Shakeel,
S/o Sarfuddin,
Aged about 42 Years,
Occupation Business,
R/o Hatri Bazar Durg, Tehsil

6 (2)

& District Durg, (C.G.)

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE 1908.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No. 538/06 **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	27.02.2007 Shri G.S. Agrawal, Senior Advocate with Shri Jitendra Gupta, counsel for the appellants. Heard on admission. Learned counsel for the appellants has urged only the following two grounds in this appeal. A/ It is not established that Alla Baqs had sold the suit shop to Mohd. Shakeel by a registered sale deed dated 30.7.1993. B/ The admission by Mohd. Shakeel in an earlier civil suit No. 17-A/1994 that a shop adjacent to the suit shop had fallen vacant which had been let out by him runs counter to the plea of the plaintiff under Section 12 (1) (b) of the Chhattisgarh Accommodation Control Act. Having heard the learned counsel for the appellants, I have perused the record of civil suit No. 21-A/1994. The registered sale deed executed by Alla Baqs conveying title of the suit shop to Mohd. Shakeel has been exhibited as Ex-P1. Alla Baqs, the vendor has, in his testimony stated that he had affixed his thumb impression on the registered sale deed. An attesting witness namely Hazi Surfuddin PW-3 in para 4 also stated on oath that he had affixed his signatures on the sale deed as attesting witness. Not only this, the fact of purchase of the suit shop by	

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मामला क्रमांक S.A.No.538 **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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Mohd. Shakeel has not been disputed by Kundan Burman DW-1, the son of the defendant in para 1 and in para 6 by stating "मेरे पिता ने 30/7/93 को अल्लाबक्श से 70,000/– रू. में दुकान खरीद लिया है ।". Kundan Burman has also stated in para 2 that Alla Baqs, as the owner of the property, had the right to sell the suit shop. In para 1 of his testimony, the following statement was made by this witness:- "मै इस बात से सहमत हूँ कि अल्लाबक्श पूर्व भवन स्वामी ने मो. शकील को रजि. विक्रय पत्र द्वारा मेरे कब्जे के किरायाशुदा दुकान को बिक्री कर दिया है तथा वह बिक्रीनामा आज भी प्रभावशील है ।". The plaintiff had pleaded that after purchasing of the suit shop, he had served a notice on the defendant/tenant on 17.11.1993. This fact has also been admitted by Kundan Burman DW-1 in para 4 by saying "दिनांक 17/11/93 को मो. शकील के द्वारा मेरे पिता पर कानूनी नोटिस भेजी गई थी". A perusal of the said notice also shows that Mohd. Shakeel had after purchasing the suit shop from Alla Baqs, sent intimation to the defendant/tenant about the fact of purchase of the suit shop by means of a registered sale deed from Alla Baqs on 30.7.1993.

In this view of the matter, the concurrent finding of fact based on proper appreciation of evidence recorded by both the Courts below that Alla Baqs had sold the suit shop to Mohd. Shakeel by a registered sale deed (Ex-P 1-A) and had thereafter by a notice dated 17.11.1993 (Ex.P-2) intimated the said fact to the tenant is impeccable and cannot be faulted with.

So far as the second point raised by the learned counsel for the appellant is concerned, the contention raised by the learned counsel

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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cannot be countenanced in view of the clear assertion in para 9 of the testimony of Mohd. Shakeel. The statement of Mohd. Shakeel in civil suit No. 17-A/94 was not proved in civil suit No. 21-A/1994. The mere fact that an adjacent shop was let out, would not by itself sufficient to negate the fact of bonafide requirement of the plaintiff/landlord for starting his business in the suit shop in view of the following statement of Mohd. Shakeel in para 9:-

मैं किरायाशुदा दुकान में अपना स्वयं का स्वतंत्र व्यापार करना चाहता हूं इसलिए मुझे दुकान की सख्त आवश्यकता है और इसीलिए मैंने वाद दुकान को खरीदा है। मैं वाद दुकान में श्रृंगार प्रसाधन और काकरी का व्यापार प्रारंभ करना चाहता हूं जिसका मुझे पूरा अनुभव है और उस लाईन में श्रृंगार प्रसाधन और काकरी की चूडी सेंटर, नूतन श्रृंगार, गृह शोभा, सोहागमहल, पाकीजा श्रृंगार, दुर्गा श्रृंगार आादि दुकानें है। मेरे पास व्यापार करने के लिए पूर्ण साधन उपलब्ध है और मुझे उसका अच्छा अनुभव है। मकान के अलावा मेरे पास दुर्ग शहर में अपना स्वयं का मकान नहीं है। मुसलमानों में बाप की संपत्ति पर बेटे को कोई हक प्राप्त नहीं होता है। मेरे पास अथवा मेरे पिता के पास वर्तमान में ऐसी कोई रिक्त दुकान नहीं है जहां पर मैं अपना व्यवसाय प्रारंभ कर सकूं। मुझे यह दुकान अपना स्वयं का व्यापार करने के लिए इसलिए उपयुक्त है कि जिस स्थान पर दुकान है वहां पर चारों तरफ श्रृंगार प्रसाधन की दुकानें है और उससे संबंधित ग्राहक भी वहां पर आते रहते है।

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मामला क्रमांक SA No. 538 **सन्** 200 6

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In this view of the matter, the concurrent finding of fact recorded by both the Courts below, granting eviction of tenant under Section 12 (1) (f) of Chhattisgarh Accommodation Control Act is also impeccable and cannot be interfered with in this second appeal. No substantial question of law is thus involved in this second appeal. This appeal being devoid of any merit, is dismissed at the stage of admission. Accordingly, M.C.P. No. 2290/2006 for stay and I.A. No. 209/2007 for taking '*Humdast*' on record stand disposed of. Learned senior Advocate for the appellants sought 3 months' time to vacate the suit shop. Prayer is not opposed. As prayed, 3 months' time from today is granted to the appellants/ defendant to vacate the suit shop. There shall be no order as to costs. **Sd/-** **Dilip Raosaheb Deshmukh** **Judge**	

Priya

P.T.O.